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No.

In the Supreme Court of the United States

SAMUEL L. LIEBER, M.D.
Plaintiff - Petitioner

vs.

CADDO LEVEE DISTRICT
BOARD OF COMMISSIONERS, ET AL.
Defendants - Respondents

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF LOUISIANA

APPENDIX VOLUME I

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APPENDIX

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APPENDIX 1

ASSIGNMENT: SECTION

SAMUEL L. LIEBER, M.D.	: DOCKET NUMBER
	: 420,225
VERSUS	:
	: FIRST JUDICIAL
	: DISTRICT COURT
STATE OF LOUISIANA,	:
DEPARTMENT OF	:
TRANSPORTATION AND	:
DEVELOPMENT	:CADDO PARISH,
	: LOUISIANA

AMENDED PETITION FOR PERMANENT INJUNCTION FOR RETURN OF PROPERTY, OR, ALTERNATIVELY, FOR DAMAGES WITH ADDED PETITION FOR NULLITY OF LOUISIANA STATE SUPPREME COURT DECISION NO. 97-C-0087, SAMUEL L. LIEBER, M.D. VERSUS CADDO LEVEE BOARD OF COMMISSIONERS, ET AL

BRIEF REGARDING PETITION FOR NULLITY

Plaintiff seeks consideration relating to, Judges' refusal to acknowledge C.E. Art. 202, Judicial notice of legal matters.

A. Mandatory. A court whether requested to do so or not shall take judicial notice of the laws of the United States, of every state, territory, and other jurisdiction of the United States, --.

So far, apparently, all Judges in this case have neither acknowledged nor applied all pertinent statutes, most of which exist in the Briefs in this Casel Nevertheless, the above Statute, C.E. Art 202 mandates use of all applicable statutes, most of which are noted below, in Table of Contents.

Also, Plaintiff notes that each statute might apply to Plaintiff, Defendant, and/or Judge!

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Section No. 0

SYNOPSIS

NO MAN IS ABOVE THE LAW!

I. -- J* The Louisiana State Supreme Court finalized adjudication of this Cause (Lieber vs. Caddo Levee Board of Commissioners, Et Al, No. 97-C-0087) by applying the Act of the Louisiana Legislature, Civil Code Act No. 2030 (Louisiana Acts 1984 No. 331, Sec. 1)

II.-- J* The Statute of the Louisiana Legislature, Civil Code Art. 2033 (Louisiana Acts 1984 No. 331, Sec. 1) mandates precisely how the Judiciary shall effect the meaning of Civil Code Art. 2030 (by plain meaning, syntax, and Legislative intent)

J* A. C. C. Art. 13 -- Plain meaning of text - When a law is clear and free from all ambiguity, the letter of it is not to be disregarded, under the pretext of pursuing its spirit.

J* B. C. C. Art. 14 -- Ordinary words - The words of a law are generally to be understood in their most usual signification, without attending so much to the niceties of gram mar rules as to the general and popular use of the words.

*

P-applies to Plaintiff
D-applies to Defendant
J-applies to Judge

J* C. C. C. Art. 15 Words of art and technical terms - Terms of art or technical terms and phrases, are to be interpreted according to their received meaning and acceptation with the learned in the art, trade or profession to which they refer.

J* D. C. C. Art. 16 -- Ambiguous words or phrases Where the words of a law are dubious, their meaning may be sought by examining the context with which the ambiguous words, phrases and sentences may be compared, in order to ascertain their true meaning.

J E. C. C. Art. 18 - Reason and spirit of laws - The universal and most effectual way of discovering the true meaning of a law, when its expressions are dubious, is by considering the reason and spirit of it, or the cause which induced the Legislature to enact it.

J F. C. C. Art. 19 - Laws declaring certain acts void - When to prevent fraud, or from any other motives of public good, the law declares certain acts void, its provisions are not to be dispensed with on the ground that the particular act in question has been proved not to be fraudulent, or not to be contrary to the public good.

J G. C. C. Art. 20 -- Odious and favored laws - The distinction of laws into odious laws and laws entitled to favor, with a view of narrowing or extending their construction,

can not be made by those whose duty it is to interpret them.

J H. C. C. Art. 21 -- Absence of express law, court's duty to decide equitably - In all civil matters, where there is no express law, the judge is bound to proceed and decide according to equity. To decide equitably, an appeal is to be made to natural law and reason, or received usages, where positive law is silent.

III.-- Code of Judicial Conduct, Canon 2-A

2. Code of Judicial Conduct, Canon 2-A (R.S. 13, Vol. 8)

J Canon 2 -- A Judge Should Avoid Impropriety and the Appearance of Impropriety in All His Activities.

A. A judge should respect and comply with law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

IV. Code of Judicial Conduct, Canon 3-A-1

3. Code of Judicial Conduct, Canon 3-A-1 (R.S. 13, Vol. 8)

J Canon 3 -- A Judge Should Perform the Duties of His Office Impartially and Diligently.

A. Adjudicative Responsibilities

(1) A judge should be faithful to the law

and maintain professional competence in it. He should be unswayed by partisan interests, public clamor, or fear of criticism.

Appendix to Canon 3
"Court" means an appellate court and includes the Supreme Court of Louisiana and the Courts of Appeal of the several circuits.

V.-- C. E. Art. 202

1. C.E. Art. 202. Judicial Notice of legal matters

J A. Mandatory. A court whether request ed to do so or not shall take judicial notice of the laws of the United States, of every state, territory, and other jurisdiction of the United States, --

VI.-- C. C. Art. 5 - Ignorance of Law

P,D,J No one may avail himself of ignorance of the law (6a. C. C. Art. 5, Comment (b) -

P,D,J Ignorance is unexcusable for laws that are in force.

VII. -- C. C. Art. 19 -- Laws declaring certain acts void -
J When to prevent fraud, or from any other motives

of public good, the law declares certain acts void, its provisions are not to be dispensed with on the ground that the particular act in question has been proved not to be fraudulent, or not to be contrary to the public good.

VIII. -- C. C. Art. 20 -- Odious and favored laws - The
J distinction of laws into odious laws and laws entitled to favor, with a view of narrowing or extending their construction, can not be made by those who duty it is to interpret them.

IX. -- C. C. Art. 21 -- Absence of express law, court's duty

J to decide equitably - In all civil matters, where there is no express law, the judge is bound to proceed and decide according to equity. To decide equitably, an appeal is to be made to natural law and reason, or received usages, where positive law is silent.

X.-- C.C. Art. #1968 -- Unlawful cause
J The cause of an obligation is unlawful when the enforcement of the obligation would produce a result prohibited by law or against public policy. Acts 1984, No. 331, Sec 1.

Note that the construction of the highway roadbed, etc, produced a result prohibited by law and against public policy, and the continuing existence of this physical entity is prohibited by law and against public Policy! It is noted that the Louisiana State Supreme Court decision of] December, 1995 voided the servitude contract, and, as noted in Art. 12 (Whatever is

done in contravention of a prohibitory law, is void, although the nullity be not formally directed) -- therefore the continued existence of said roadbed, as well as its use, is void (v-s-)!

XI. -- C.C. Art. #1953 -- Fraud may result from misrepresentation or from silence

P, D, J Fraud is a misrepresentation or a suppression of the truth made with the intention either to obtain an unjust advantage for one party or to cause a loss or inconvenience to the other. Fraud may also result from silence or inaction. Acts 1984, No. 331, Sec 1.

XII. C.C. Art. 7 Derogation of Public Interest Laws is an absolute nullity (Source: C.C. Arts. 11, 12 (1870)

J Persons may not by their juridical acts derogate from laws enacted for the protection of the publicinterest. Any act in derogation of such laws is an absolute nullity.

XIII. C.C. Art #11 -- Conventions contrary to law or

P, D, J public policy; renunciation of benefits - Individuals can not by their conventions, derogate from the force of laws made for the preservation of public order or good morals.

XIV. C.C. Art. 12 (1870) -- Contravention of prohibitory law

P,D,J - Whatever is done in contravention of a prohibitory law, is void, although the nullity be not formally directed.

XV. C.C. Art. 3481 -- GOOD FAITH

C.C. Art. #3480 -- Good faith

P,D,J For purposes of acquisitive prescription, a possessor is in good faith when he reasonably believes, in light of objective consider-

ations, that he is owner of the thing he possesses. Acts 1982, No. 187, Sec 1.

With understandIng of the frequent suits in 1952 and 1953 by the Highway Department attorneys, it becomes quite obvious that the 1953 servitude had to have been known to be illegal at that time, thus showing BAD FAITH!

XVI. -- 22. GOOD FAITH

P,D,J C.C. Art. 487, Acts 1979, No. 180 Sec. 1, effective 1 January 1980

Possessor in good faith; definition

P, D, For purposes of accession, a possessor is in good faith when he possess by virtue of an act translative of ownership and does not know of any defects in his ownership. He ceases to be in good faith when these defects are made known to him or an action is instituted against him by the owner for the recovery of the thing.

XVII. 13. DENIAL OF DUE PROCESS (PROCEDURAL AND SUBSTANTIVE)

Note that District Court Judge denied Plaintiff procedural due process in many ways, in not approaching each and every statute 'that he should have, as mandated by C.E. Art. 202, Judicial Notice!

Also, as noted, time and again, there have been numerous substantive denials of due process, relating to refusal to approach all law, in misinterpreting some law, and in

applying wrong law!

XVIII. 14.-- Denial of equal protection

D,J The Judges, at each level, have ignored the Highway Department's gift of free use of this land to third parties, as well as allowing illegal use of land at the northwestern end of this highway system, as well as allowing illegal parking on the part of a few church groups within the highway confines. At the same timc, over the many years, the Highway Department has refused to allow property owner commercial use of property, at the same time allowing commercial use by other people!

XIX. --15. IGNORING LAW

ILLEGAL USE OF LAW

D,J Neither R.S. 19:14 nor 13:5111 relate to this case, because --

The State paid for property's use, although obtaining an illegal servitude!, -- and, -- both statutes relate only if payment had not occurred!

CC Art #1968 -- Unlawful cause

D,J The cause of an obligation is unlawful when the enforcement of the obligation would produce a result prohibited by law or against public policy. Acts 1984, No. 331, Sec 1.

CC Art #1953 -- Fraud may result from misrepresentation or from silence

D,J Fraud is a misrepresentation or a suppression of the truth made with the intention either to obtain an unjust advantage for one party or to cause a loss or inconvenience to the other. Fraud may also result from silence or inaction. Acts 1984, No. 331, Sec 1.

CC Art #1894 Obligation not subject to compensation

D,J Compensation takes place regardless of the sources of the obligation.

Compensation does not take place, however, if one of the obligations is to return a thing of which the owner has been unjustly dispossessed, --

See Act 331, 1984, Sec 5, page 811 -- compensation

-- Art 1894.

See under Comments, page 812

D,J (b) -- Wrong doers or parties who have acted in bad faith are not allowed to set up the plea of compensation.

NB -- Herein, continued use of roadbed, etc, would be continuing compensation!

XX. 17. INCONSISTENT JUDGMENTS

Appeal Court Judge Marvin has repeated these tragic errors!

J The December, 1995 mandate-by the Supreme Court that C.C. Art. 2030 governs, -- demands use of C.C. Art. 2032, -- that such action does not prescribe, as well as use of C.C. Art. 2033 which man dates the return of the property in its prior physical state, or, if impracticable, payment of damages, to include fruits and revenues, in order to prevent unjust enrichment!
All of the above has been ignored! -- with the use of illegal law!

COMPENSATION

C. C. Art. 1894 - Obligations not subject to com pensations
D,J (Wrongdoers)

19. QUASI ESTOPPEL
Definition -- The principle precluding a party from asserting, to another's disadvantage, a right inconsistent with a position
D,J previously taken by him.
-- Includes "equitable estoppel" and embodies doctrine that one may not repudiate an act done or position assumed by him where such course would
2) work injustice to another rightfully relying thereon.

The principle of QUASI ESTOPPEL precludes DOTD from asserting (to Plaintiff's disadvantage), a right inconsistent with the position previously taken by DOTD, -- namely, Since DOTD insisted
D,J that the Servitude was legal and binding, until nulled by theSupreme Court decision of December, 1995, -- therefore, DOTD is precluded from using any statute disallowed by the "legal and binding

intent of the Servitude under color of law"! -- Therefore, no prescription can run!

20. C.C. Art. 6 -- RETROACTIVITY OF LAWS
In the absence of contrary legislative expression, substantive laws apply prospectively only. Procedural and interpretativelaws apply both prospectively and retroactively, unless there is a
3) legislative expression to the contrary.

Comments

(c) According to a well-settled rule of statutory interpretation, procedural and interpretative laws apply both prospectively and retroactively unless
they violate vested rights or obligations of contracts.

J Note -- 1975 Statute of one year prescription is not retroactive, and cannot prevent payment of fruits and revenues from beginning of roadbed use about 1954 until the new statute on prescription (St. Julien). Also, St. Julien cannot apply in this case!

AND, FINALLY, --
PRECARIOUS POSSESSION

XXI. 19. PRECARIOUS POSSESSION

As noted herein, yet never before mentioned in this suit by Plaintiff, Defendent, or Judge, C. C. Art. 3477 mandates no prescription by a precari ous possessor!

Note that the Highway Department (DOTD) was a

precarious possessor of use of the servient estate for a roadbed as the dominant estate for itself. And, as precarious possessor, Defendent could not prescribe for title to said servient estate which it protected for servient estate owner, -- until 6 December 1995, -- when DOTD became an ADVERSE POSSESSOR!

SECTION NO. 1

C.E. ART. 202, JUDICIAL NOTICE OF LEGAL MATTERS

A. Mandatory. A court whether requested to do so or not shall take judicial notice of the laws of the United States, of every state, territory, and other jurisdiction of the United States, -

COMMENT: --

(Presumption: Each Judge has carefully studied all data in this case!)

1) C.C. Art. 12 -- Whatever is done in contravention of a prohibitory law, is void, although the nullity be not formally directed.

Note -that C.C. Art. 2030 voided the servi tude contract as an absolute nullity. In addition to the servitude contract being an absolute nullity, note that Art. 12 mandates that any action performed (done) under said contract, obviously which is in contravention of a prohibitory law (R.S.

48:312) is void! That means that the construction of the highway is void -- null -- so -- that its existence is void (noted to be a legal ideation)!

This particular C.C. Art. 12 prevents any possible type of prescription due to the physical existence of the highway since circa 1954, because such construction is made void--null by this Article!

Obviously, said highway physically exists! Nevertheless, any legal action must take into account that the law forces such legal action to act as if the highway never had been constructed, and has never existed, and does not exist! Perhaps, as of the December, 1995 Supreme Court Decision, the roadbed has physically existed (again"illegally, -- with one year prescription law able to be applied, -- except for this suit preventing such prescription!)

C.C. Art #1968 -- Unlawful cause

The cause of an obligation is unlawful when the enforcement of the obligation would produce a result prohibited by law or against public policy. Acts 1984, No. 331, Sec 1.

Note that the construction of the highway roadbed, etc, produced a result prohibited by law and against public policy, and the continuing existence of this physical entity is prohibited by law and against public policy! It is noted that the Louisiana State Supreme

Court decision of December, 1995 voided the servitude contract, and, as noted in Art. 12 (Whatever is done in contravention of a prohibitory law, is void, although the nullity be not formally directed) --therefore the continued existence of said roadbed, as well as its use, is void (v.s.)!

R.S. 19:14 and 13:5111 cannot relate to this case, because both statutes relate to actions where payment had not occurred! Note well that the State paid for this property's use, although in doing so, obtained an illegal servitude. It is also to be noted that in 1953, at time of Servitude purchase, purchase of such right of construction could not be considered as causing damage to said property! However, at the time of the 1995 Supreme Court decision, such action did become a "damage"! and now is illegally damaging the property!

4) C.C. Art. 1894 -- Obligation not subject to compen sation --

Compensation takes place regardless of the sources of the obligation.
Compensation does not take place, however, if one of the obligations is to return a thing of which the owner has been unjustly dispossessed,

See Act 331, 1984, Sec 5, page 811 --
Compensation Art 1894.

See under Comments, page 812

(b) -- Wrong doers or parties who have acted in bad faith are not allowed to set up the plea of compensation.

NB -- Herein, continued use of roadbed, etc, would be continuing compensation!

NOTA BENE The ongoing use of the roadbed, etc, is a continuing compensation to the Highway Department, and will continue to be a continuing compensation to the Highway Department, until said Highway Department purchases whatever rights might be needed for such continuing compensation!

5) C.C. Art. 3465 Acts 1982 No. 187, Sec. I- Interruption of acquisitive prescription -- Acquisitive prescription is interrupted when possession is lost.

Note that DOTD lost possession (under illegal servitude contract, yet under color of law) December '95, yet had never "possessed", as proven by the Supreme Court decision, December '95! -- as mandated by Supreme Court Decision!

6) C.C. Art. 2033, which is a mandated set of actions whenever
C.C. Art. 2030 is effective, -- this Art. 2033 has been ignored completely by all involved Judges, at the District, Appeal, and Supreme Court levels! Note that Judge Thaxton at the District Court level maintained that prescription applied, apparently not corrected by senior Judges! Again, it is to be noted that prescription does not apply to an absolute nullity, as noted under:

Adverse possession - 72 (2)

Smith vs. Taylor, 226 LA 235
La. C.C.- Arts. 11 and 12

Therefore, all acts done through Servitude Contract are void (null without legal force or binding effect)

Therefore, - 1) Use of land is void;

2) Construction of roadbed is void.

3) Continuing use of roadbed is void.

Therefore, prescription laws cannot apply.

7) Art. 3465 -- Acquisitive prescription is interrupted when possession is lost (Acts. 1982 187-Sec. 1) -- and since possession never occurred, prescription laws can not apply. It is noted that a new prescrip tion period began one day after filing and recording of the Supreme Court decision of December, 1995, which prescription has been interrupted by this new suit! Also, note that payment to property owner for use of property in 1953 allowed undamaging property use, which changed to damaging use by the December, 1995 Supreme Court decision. Again, one year prescription has been prevented by institution of this new suit!

8) C.C. Art. 3465 Act. 1892, No. 187, Sec. 1-- Interruption of acquisitive prescription -- Acquisitive Prescription is interrupted when pos-session is lost.

Note that DOTD lost possession with the Supreme Court decision of December, 1995,

its physical possession previously having been declared void. Only in December, 1995, did DOTD commence tortious posses sion of this roadbed!

9) C.C.Art. 3467 - Acts. 1982, 187, Sec. 1 -- Persons against whom prescription runs -- Prescription runs against all persons unless exception is established by legislation.

Even if the 1975 Statute of one year prescription after placement of highway were legal, damages would be due from the time of illegal establishment of said highway, circa 1953 until !975! Such has not been considered by any Judge.

10) C.C. Art. 3477. Precarious possession; inability to prescribe -- Acquisitive prescription does not run in favor of a precarious possessor --.

Nota Bene: This statute can stand alone, and null - void the decisions in this case! Certainly, payment to land owner for property's use for a roadbed in 1953, before construction, made the Highway Department a precarious possessor (certainly not an adverse possessor, --and certainly not a fee title owner)!

SECTION NO. 2

CODE OF JUDICIAL CONDUCT, CANON 2-A
(R.S. 13, VOL. 8)
Canon 2 -- A Judge Should Avoid Impropriety and the Appearance of
Impropriety in All His Activities.

A. A judge should respect and comply with law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

COMMENT

Other than to expose to each judge the rules and regulations by which he shall abide in his adjudications, I have recourse to the Federal Courts, as well as the Louisiana State Judiciary Commission, the latter being quite questionable regarding its willingness to act wisely, in my experience!

SECTION NO. 3

CODE OF JUDICIAL CONDUCT, CANON 3-A-1 (R.S. 13, VOL. 8) Canon 3 -- A Judge Should Perform the Duties of His Office Impartially and Diligently.

A. Adjudicative Responsibilities (1) A judge should be faithful to the law and maintain professional competence in it. He should be unswayed by partisan interests, public clam or, or fear of criticism.

Appendix to Canon 3
"Court" means an appellate court and includes the Supreme Court of Louisiana and the Courts of Appeal of the several circuits.

COMMENT

See COMMENT under 2. Code of Judicial Conduct, Canon 2-A,
preceding page.

SECTION NO. 4

C.C. ART. 1968 (UNLAWFUL CAUSE)

CC Art #1968 -- Unlawful cause

The cause of an obligation is unlawful when the enforcement of the obligation would produce a result prohibited by law or against public policy. Acts 1984, No. 331, Sec 1.

COMMENT

This was mandated by the December, 1995 Supreme Court decision. Unfortunately, -- tragically, -- the Supreme Court altered the 1953 unlawful contract into another 'unlawful contract, because of said Court's neglect in applying the mandated effects of C.C. Art. 2030 by C.C. Art. 2033! -- also, by using R.S. 19:14, although land owner was paid before construction! -- also, by neglecting C.C. Art. 3477, which prevents prescription by a precarious possessor (detainer)!

SECTION NO. 5

C.C. ART. 1953 (FRAUD BY SILENCE)

CC Art #1953 --- Fraud may result from misrepresentation or from silence

Fraud is a misrepresentation or a suppression of the truth made with the intention either to obtain an unjust advantage for one party or to cause a loss or inconvenience to the other. Fraud may also result from silence or inaction. Acts 1984, No. 331, Sec 1.

COMMENT

-- in this Suit, there has been both ignorance of law and ignoring of law! Apparently, fault lies upon the shoulders of Plaintiff, and Defendant (many Highway Department employees, including lawyers), as well as Defendant's counsel, as well as Judge involved herein!

Johnson v. Mansfield Hardwood Lumbar Company, 159 F. Supp. 104, 1958

Pg. 105 - 5. Fraud - Key 6.

Constructive fraud is a breach of legal or equitable duty which, irrespective of moral guilt of feasor, the law declares fraudulent because of its tendency to deceive others, to violate public or private confidence, or to injure public interests, and neither actual dishonesty of purpose nor intent to deceive is an essential element of constructive fraud. See also 37 C.J.S. verbo Fraud, Section 2 p. 211, et seq.:

"Constructive fraud is a breach of legal or

equitable duty which, irrespective of the moral guilt of the fraud feasor, the law declares fraudulent because of its tendency to deceive others, to violate public or private confidence, or to injure public interests. Neither actual dishonesty of purpose nor intent to deceive is an essential element of constructive fraud.

"Constructive fraud usually arises from a breach of duty where a relationship of trust and confidence exists. "A fiduciary relation exists: Wherever confidence on one side results in superiority and influence on the other side; where a special confidence is reposed in one who in equity and good conscience is bound to act in good faith and with due regard to the interests of the one reposing the confidence; where confidence is reposed and accepted, whether the origin is moral, social, domestic, or merely personal; or where a person has knowledge and authority which he is bound to exercise for the benefit of another person."

COMMENT

Plaintiff is inclined to fear fraud in this case, as shown by many, many actions on the part of Highway Department employees, as well as by many actions on the part of some Judges.

SECTION NO. 6

C.C. ART. 5 - IGNORANCE OF LAW

No one may avail himself of ignorance of the law

(6a. C.C. Art. 5, Comment (b) -

Ignorance is unexcusable for laws that are in force.

COMMENT

The above Statutes most certainly apply to each and every citizen,

(b) - 1) A physician, lawyer, judge!

NOTA BENE: -- A. K. Roy, Inc. v. Board of Commissioners, III So. 2nd 765 --
Pg. 767 -- R.S. 19:2.1, Subd. B. and C. C. Art. 2630 are applicable only to actions for damages and claims resulting from a legal expropriation of land, -- and R. S. 9:5624 applies only "when private property is damaged for public purposes," but not to actions for the recovery of the value of property taken for public purposes.
Greater Baton Rouge Air Port District v. Hays 339 So. 2nd 431 -- LSA-C. C. Art. 2630, R. S. 9:5624, -- making actions for damages to private property damaged for public purposes subject to prescription of two years, are applicable only to actions for damages and claims resulting from legal expropriation.

SECTION NO. 7

C.C. ART. 7 (SOURCE: C.C. ARTS. 11, 12 (1870)

Persons may not by their juridical acts derogate from laws enacted for the protection of the public interest. Any act in derogation of such laws is an absolute nullity.

COMMENT

Note that Judges shall take Judicial notice of each and every statute, and shall not derogate, in this instance, particularly relating to C.C. Art. 2030 - 33, noting that 2033 gives the specific mechanism that shall be used by the Judiciary!

Plaintiff maintains that the various statutes mentioned herein force maintaining nullity, and force maintaining no possible prescription on the part of the Highway Department!
It should be noted with great dismay that the end results of the juridical acts since the original decision that C.C. Art. 2030 holds herein, -- that all further juridical acts have derogated from such laws enacted for the protection of the public interest, making each and every act in derogation of such laws an absolute nullity!
Please refer to comments on page 14.
Also, note that C.C. Art. 3477, regarding precarious possession, -- forces an absolute nullity, mandating that DOTD has had no rights herein (and,. therefore, owes damages, including fruits and revenues, -- and, also, must purchase property holding the roadbed!).

SECTION NO. 8

C.C. ART #11 -- Individuals can not by their conventions, derogate from the force of laws made for the preservation of public order or good morals.

COMMENT

Please refer to comments on page 14.

SECTION NO. 9

C.C. ART. 12 (1870) -- Whatever is done in contravention of a prohibitory law, is void, although the nullity be not formally directed.

COMMENT

-- Therefore, the highway's existence is void! This means that the construction of the highway is void -- null. This particular C.C. Art. 12 prevents any possible type of prescription due to the physical existence of the highway since 1954, because such construction is made void - null by,this Art.! Obviously, said highway physically exists! Nevertheless, any legal action must take into account that the laws force such legal action to act as if the highway never had been constructed!

Please refer to comments on page14.
Certainly, the highway exists physically. However, since DOTD's precarious possession as a detainer was lost by the Dec, 1995 Supreme Court decision, giving it adverse possession, -- the present suit stopped potential prescription of one year!

SECTION NO. 10
C.C.P. ART. 2001-6 (NULLITY)

COMMENT

CC Art #2030 -- Absolute nullity of contracts

A contract is absolutely null when it violates a rule of public order, as when the object of a contract is illicit or immoral. A contract that is absolutely null may not be confirmed.

CC Art 2033 -- Effects

An absolutely null contract, or a relatively null contract that has been declared null by the court, is deemed never to have existed. The parties must be restored to the situation that existed before the contract was made. If it is impossible or impracticable to make restoration in kind, it may be made through an award of damages.

Comments

(b) The restoration of the parties to the situation that existed before the contract that is called for by this Article includes restoration of fruits and revenues, as any unjust enrichment of the parties must be prevented.

See Art. 7, 11, 12, and R.S.48:312: --

Whatever is done in contravention of a prohibitory law is void, although the nullity be not formally directed.

(N.B. -- The act of highway construction is

void, making the highway void, -- non-exis tent!)

COMMENT

It should be noted that the Appeal Court Judgment is an absolute nullity, since said adjudication was recorded after the December, 1995 Supreme Court decision *, which mandated use of C.C. Art. 2030

*Also both claim and issue preclusions are effected herein (res judicata, etc)! and the consequences of C.C. Art. 2030, as noted by C.C. Art. 2032 and 2033.

The only means to a legal end result can be use of C.C. Art. 2033:

1) Return land as it was*, and
2) Pay damages-fruits-revenues-in order to prevent unjust enrichment.

* Consider continuing the roadbed as it is, but pay owner

1) Cost of removing roadbed
2) Cost of returning levee
3) Cost of removing levee
4) Cost of returning roadbed
5) And purchase of property at today's prices, noting that the levee was abandoned a few years ago!

With voiding of Servitude, -- it means that it never existed, that all changes thereby are voided, and that laws applicable to legal Servitudes shall not apply. This means that there has been an illegal taking (tort), trespass (tort), and fraud, relating to refusal to return that part used by third parties, due to an excess taking, plus denial of equal protection, with ongoing use by third parties in other areas relating to churches

and commercial enterprises!

C.C. Art. 2030 -- Conventional Obligations, Contracts, Book 3, Title 4, Note 2.

2. Ratification –

> Absolute nullities established in interest of individuals are susceptible of ratification, either expressly or impliedly, and may be prescribed against, while such nullities in derogation of public order and good morals are never susceptible of ratification and can never be prescribed against. Whitney Nat. Bank of New Orleans v. Schwob, 1943, 203 La. 175, 13 So. 2nd 782.

The application of Servitude Law was illegal, particularly noting C.C. Art. 3477; -- a precarious possessor cannot prescribe, -- ,as was the refusal to return the excess taking about 1955, the allowance of third party use, the refusal to return the excess taking in 1963 due to liberative prescription, the refusal to return the excess taking in 1966 after request, and the refusal to return three-thirds of the excess taking in 1989, returninq only two-thirds of the excess taking, in collusion with the City, to hold the other one-third, because of its potential future need for highway purposes!

As reqards the term "ill practice", the refusal of each judge to answer in writing each of Plaintiff's complaints, which proves inadequate study, with inadequate understanding of statutory meanings, and use! -- proves that these claims were simply ignored!

This type of "ill practice" deprives Plaintiff of one's legal rights.

Also, this iudgment is unconscionable and inequitable, such that an action for nullity should prevail!

It is a denial of due process in refusing to use the effects of C.C. Art. 2030, as listed by 2033! It is to be noted that

certain claims and certain issues have been ignored completely by the judges, and, in not mentioning such, there can be no preclusion of such an unmentioned claim or issue! As noted under C.C. Art. 2004. -- Annulment for vices of substance. -- action must take place within one year of Plaintiff's discovery of the fraud or ill practices. It should be noted that this year began with the acceptance of the Appeal Court's adiudication on damages by the Supreme Court, which completely ignored Plaintiff's counsel's admonishings!

This shows a depriving of litigant's legal rights, so that enforcement of this judgment would be unconscientious and inequitable! Plaintiff's legal rights are denied when Judge uses wrong law, and even misinterprets this wrong law!

Such iudgment may be annulled, when the ground for nullity has not been considered by the appellate court!

SECTION NO. 11

DENIAL OF DUE PROCESS (PROCEDURAL AND SUBSTANTIVE)

Note that District Court Judge denied Plaintiff procedural due process in many ways, in not approaching each and every statute that he should have, as mandated by C.E. Art. 202, Judicial Notice!

Also, as noted, time and again, there have been numerous substantive denials of due process, relating to refusal to approach all law, in misinterpreting some law, and in applying wrong law!

COMMENT

Please refer to comments on page .

R. S. 13:5111 -- Appropriation of property
Pg. 1 -- Suit for compensation for the taking of property by defendant, other than through expropriation proceeding, shall include attorney, engineer, appraisal fees --. Actions for compensation for property taken shall prescribe three years from date of such taking.

NOTA BENE: -- This suit is not for compensation for a taking, because Highway Department had paid owner for a servitude! Therefore, prescription of three years is meaningless, and cannot apply! This suit is for compensation for damages due to the following:

1) Refusal to return property allowed for third party use (which proved an excess taking developing a few years after servitude contract was purchased!

2) Refusal to return such excess taking when lost by liberative prescription in 1963 (ignorance of law is no excuse)!

3) If impracticable to return land as it was before servitude contract changes, then damages to include fruits and revenues since 1953 are due and owing, in order to avoid unjust enrichment! Also, the roadbed must now be purchased!

4) Refusal to pay fruits and revenues from onset of liberative prescription

in 1963, while insisting that the servitude contract was valid and binding, -- yet quitclaiming back to Plaintiff about two-thirds of such excess taking which was lost by liberative prescription, continuing to insist that such one-third not quitclaimed is to be used for future highway construction (see IntraDepartmental Notes!).

R. S. 13:5111 -- Appropriation of property
Note 2.
Notes of decisions.
Pg. 27 -- 1. Prescription -- When private property is damaged for public purpose, any and all actions for damages are prescribed by the prescription for two years, --
but, when property is taken by State --, without expropriation, actions for compensation prescribed three years from date of taking. (Riley v. Consolidated -- 642 - So. 2nd 693, 1994)

NOTA BENE: This property was taken without expropriation, and its use by servitude was paid for by the Highway Department, compensating the owner at the time of filing and recording said servitude.
This suit has never been concerned with compensation for servitude rights, but with compensation for the discovery (inverse condemnation) about 1982-1985 of the servitude's

illegality, and its absolute nullity, which nullity mandates either

1) Return of property as it was before change, or
2) Pay damages to include fruits and revenues, to avoid unjust enrich ment!

Also, the roadbed property must be purchased from owner, by the wrongdoer, without any compensation from return of this proper ty!

Pg. 28 -- Where property is taken or damaged without expropriation proceeding, there is inverse condemnation, for which award of attorney fees is provided by statute (Naquin v. DOTD - 604 So. 2nd 62).

Expropriation -- R. S. 19:2.1

Note 10 -- Prescription, pg. 308 -- C. C. Art. 2630, R. S. 9:5624 -- actions for damages to private property damaged for public purposes, subject to two year prescription, -- applicable only to actions for damages and claims resulting from legal expropriation (Greater Baton Rouge Airport v. Hays -- 339 So. 2nd 431, 1976).

A.K. Roy, Inc. v. Board -- 111 So 2nd 765, 1959

Pg. 765 - 1. Eminent domain - Key 288 (2) -- two year prescription regarding legal expropriation is not applicable against appropriated land.

Pg. 767 - [1,2] -- R. S. 19:2.1 Subd. B. and Art. 2630 R.C.C. are applicable only to actions for damages and claims through legal expropriation.

Also, R. S. 9:5624 applies only "when private property is damaged for public purposes," but not to actions for the recovery of the value of property taken for public purposes.

NOTA BENE: -- Here, again, this suit does not relate to recovery of values for property taken, which have already been paid for, -- but to payment of damages relating to fruits and revenues over years, plus payment for ownership of property at this time!

SECTION NO. 12

DENIAL OF EQUAL PROTECTION

The Judges, at each level, have ignored the Highway Department's gift of free use of this land to third parties, as well as allowing illegal use of land at the northwestern end of this highway system, as well as allowing illegal parking on the part of a few church groups within the highway confines. At the same time, over the many years, the Highway Department has refused to allow property owner commercial use of property, at the same time allowing commercial use by other people!

COMMENT

Please refer to comments on page14 .
Please refer to comments on pages 11 and following.
See comments under 11 - Denial of Due Process.

SECTION NO. 13
IGNORING LAW
ILLEGAL USE OF LAW

Neither R.S. 19:14 nor 13:5111 relate to this case, because--The State paid for property's use, though obtaining an illegal servitude!, -- and, -- both statutes relate only if payment had not occurred!

CC Art #1968 -- Unlawful cause
The cause of an obligation is unlawful when the enforcement of the obligation would produce a result prohibited by law or against public policy. Acts 1984, No. 331, Sec 1.

CC Art #1953 - Fraud may result from misrepresentation or from silence

Fraud is a misrepresentation or a suppression of the truth made with the intention either to obtain an unjust advantage for one party or to cause a loss or inconvenience to the other. Fraud may also result from silence or inaction. Acts 1984, No. 331, Sec 1.

CC Art #1894 -- Obligation not subject to compensation --
Compensation takes place regardless of the sources of the obligation.
Compensation does not take place, however, if one of the obligations is to return a thing of which the owner has been unjustly dispossessed, --
See Act 331, 1984, Sec 5, page 811 -- compensation --
Art 1894.

See under Comments, page 812

(b) -- Wrong doers or parties who have acted in bad faith are not allowed to set up the plea of compensation.

NB -- Herein, continued use of roadbed, etc, would be continuing compensation!

NOTA BENE -- The ongoing use of the roadbed, etc, is a continuing compensation to the Highway Department, and will continue to be a continuing compensation to the Highway Department, until said Highway Department purchases whatever rights might be needed for such continuing compensation!

Appeal and Error - Key 1008.1 (5,7), 1010.1 (5)

Ardoin v. DOTD

679 S-2, 928, 1996

Two-part tests for reversal

1) Reasonable factual basis does not exist for trial court's finding, and
2) Record establishes that finding is clearly wrong (manifestly erroneus). Naquin v. DOTD, 604 So. 2nd 62, 1992

Pg. 62 -- 2. Eminent Domain - Key 262 (4) When expert's well reasoned testimony supports award of damages in public taking case and is accepted by trier of fact, property owner should prevail.

8. Eminent Domain - Key 316
Where property is taken or damaged without expropriation proceeding there is inverse condemnation, for which award of attorney fees is provided for by statute. LSA-R.S. 13:5111.

Pg. 65 The foregoing provision applies to "the intentional or purposeful expropriation or appropriation of private property for a public use or convenience." See Angelle v. State, 212 La. 1069, 34 So. 2nd 321, 2 A.L.R. 2nd 666. Under this provision, property is "taken" when the public authority acquires the right of ownership or one of its recognized dismemberments. See Parish of Jefferson v. Texas Co., 192 La. 934, 189 So. 580; 2 Nichols, Eminent Domain, Sec. 6.1[1] (3d ed. rev. 1963); 24 La. Law Rev. 849, 850-851. Property is considered "'damaged" when the action of the public authority results in the diminution of the value of the property. Parish of Lafayette, etc. v. Hernandez, 232 La. 1, 93 So. 2nd 672; Texas Pipe Line Company v. Barbe, 229 La. 191, 85 So. 2nd 260; 4 Nichols, Eminent Domain, Sec. 14.2 (ed. rev. 1963). In the event of a public taking, the Louisiana Constitution attempts to compensate the damaged party "to the full extent of his loss." La. Const. Art. I, Sec. 4. Such "full compensation" has been held in include cost of relocation, inconvenience and loss of prof its. State, DOTD v. Dietrich, 555 So. 2nd 1355 (La. 1990). Additionally, loss of business and replacement costs have also been recognized as compensable items of damages in these cases. (Business Losses) - State, DOTD v. Sheridan 517 So. 2nd 415

(la. App., lst Cir., 1987); (Replacement Costs) - State, DOH v. Constant, 369 So. 2nd 699 (la. 1979).

Comment -- No clinic -- No income!

Veillon v. Columbia Gulf Transmission Company, 192 So. 2nd, 646 Pg. 649 -- 2. In the original St. Julien decision t he court had noted that, if the entry had been unlawful instead of with the acquies cence of the landowner, then the payment of damages would not have the effect of making the appropriation legal; the company would remain liable to successive actions for the continuing trespass until the property was lawfully expropriated. 35 La. Ann. 926. See also Sigue v. Texas Gas Transmission Corp., La. App. 3 Cir., 154 So. 2nd 800, certiorari denied.

Veillon does not apply!

R.S. 19:14. Possession of property; removal of facility; and objection; waiver.

Pq- 170 - 5. Acquiescence, St. Julien doctrine "St. Julien" doctrine, under which landowners were deemed to have acquiesced in improvements placed on their property by public corporations provided they knew of construction, applies to improvements in place at time Supreme Court overruled doctrine. Howard v. Louisiana Power & Light Co., App. 5 Cir. 1991, 583 So. 2nd 503.

This shows that the roadbed was not

a damage, but an improvement! (It became a damage as of the Supreme Court Decision of December, 1995!)

Pg. 171 - 6. -- Burden of proof, St. Julien doctrine
Under the St. Julien doctrine, a servitude is acquired on only that portion of an owner's property that is physically occupied and the burden is on the occupant to prove the extent of the land used. State, Through Dept. of Highways v. Champagne, App. 1 Cir. 1979, 371 So. 2nd 626, writ granted in part, denied in part 375 So. 2nd 645, writ denied 375 So. 2nd 646, reversed in part 379 So. 2nd 1069, on remand 391 So. 2nd 1234.
N. B. - The Quitclaim was an admission of excess taking!

PRESCRIPTION

Roy v. Board of Commissioners, 111 So 2nd 765
Pg 767 -- [1,2] In support of the plea of two-year prescription in the lower court, defendant relied on the provision of R.S. 19:2.1, subd. B, Article 2630 of the Civil Code, and R.S. 9:5624; but, apparently conceding the correctness of the trial judge's ruling that R.S. 19:2.1, subd. B and Article 2630, R.C.C., are applicable only to actions for damages and claims resulting from a legal expropriation of land, defendant, in this court, relies solely on R.S. 9:5624. This section is equally inapposite to the case at bar, since, by its very language, it applies only "when private property is damaged for public purposes," but not to actions for the recovery of the value of property taken for public purposes.
R.S. 19:2.1 -- Expropriation, Pg 308.

10. Prescription.

LSA-C.C. Art. 2630, R.S. 9:5624, and this section making actions for damages to private property damaged for public purposes subject to prescription of two years, were applicable only to actions for damages and claims resulting from legal expropriation. Greater Baton Rouge Airport Dist. v. Hays, App. 1976, 339 So. 2nd 431, writ denied 341 So. 2nd 403.

Pg. 305, Sec. 2.1 - Petition for expropriation
Comment -- This relates to expropriation, and not appropriation!

Constance v. State through DOTD, 626 So 2nd, 1151 (Louisiana, 1993)

Pg. 1156 -- [2] Furthermore, La. Const. Art. 1, & 4 and its predecessor article, La. Const. of 1921 Art. I, 2, have been interpreted to support a proceeding by a property owner for a taking or damaging even in the absence of an expropriation action. Despite the legislative failure to provide a procedure to seek redress when property is damaged or taken without the proper exercise of eminent domain, this Court has held that a cause of action must arise out of the self-executing nature of the constitutional command to pay just compensation. Chambers, 595 So 2nd at 602; Reymond v. State, through the Department of Highways, 255 La. 425, 231 So. 2nd 375, 383 (1970). Such a cause of action is referred to as an inverse condemnation, which is defined in Reymond as the "proceeding whereby an owner may seek redress when his property is damaged or taken without the proper exercise of eminent domain."

Rivet v. the State, DOTD, 635 So 2nd 295

Pg 297 -- In Parish of Jefferson v. Tassin, 594 So 2nd 525 (La. App. 5 Cir. 1992) we observed:

> A taking or damaging of property can occur from the official act of expropriating a whole or partial tract of land or from inverse condemnation, which is when property is taken or damaged without the proper exercise of eminent domain. Reymond v. State, Department of Highways [255 La. 425] 231 So. 2nd 375 (La. 1970).

In addition, when state activity causes a landowner "to sacrifice all economically beneficial uses in the name of common good, that is, to leave his property economically idle, he has suffered a taking." Lucas v. South Carolina Coastal Council, -- U.S. --, 112 S. Ct. 2886, 120 L. Ed. 2nd 798 (1992).

Miller v. Colonial Pipeline 173 So 2nd 840

Pg. 841 -- Eminent Domain - Key 288 (2)

> Codal two-year prescriptive period when private property is damaged for public purposes applies where right to use land was acquired by conventional agreement as well as where it was acquired by *lawful* appropriation. LSA - R.S. 9:5624.

The general expropriation statute provides in LSA - R.S. 19:2.1 (B) as follows:

> "All claims for property by, or for damages to the owner caused by the expropriation of property pursuant to R.S. 19:2 shall be barred by the prescrip tion of two years commencing on the date on which the property was actually occupied and used for the purposes of the expropriation.
> Added Acts 1950, No. 238, & 1."

[7, 8] Counsel for Colonial suggests that LSA - R.S. 9:5624 has the sole purpose of providing a prescriptive period applicable to "appropriations", because prior to 1950

there were none. We think clearly it does apply to lawful appropriations. --

Cruell v. Jefferson Parish, 216 So. 2nd 604 Pg. 607 - [1,2] Before we reach a consideration of this problem however we must deal with a plea of prescription which is urged by the Parish. It contends LSA R.S. 9:5624 should apply in this situation and that the prescription of two years should now bar plaintiff's suit.

This contention is disposed of by the rationale of the Supreme Court in A. K. Roy, Inc. v. Board of Commissioners, 237 La. 541, 111 So. 2nd 765 (1959). There the Supreme Court stated:

> "In support of the plea of two year prescription in the lower court, defendant relied on the provision of R.S. 19:2.1, subd. B, Article 2630 of the Civil Code, and R. S. 9:5624; but, apparently conceding the correctness of the trial judge's ruling that R.S. 19:2.1, subd. B and Article 2630 R.C.C., are applicable only to actions for damages and claims resulting from a legal expropriation of land, defendant, in this court, relies solely on R.S. 9:5624. This section is equally inapposite to the case at bar, since, by its very language, it applies only 'when private property is damaged for public purposes,' but not to actions for the recovery of the value of property taken for public purposes."

Greater Baton Rouge Airport District v. Hays, 339 So. 2nd Pg. 432 - 4. 431 Eminent Domain - Key 288 (2)

> Expropriation: Statutes making actions for damages to private property damaged for public purposes subject to prescription of two years were applicable only to actions for damages and claims resulting from legal expropriation. LSA - C.C. Art. 2630; LSA - R.S. 9:5624,

19:2.1, subd. B.

6. Eminent Domain - Key 288 (2)
Expropriation: Statute providing that actions for damages to property damaged for public purposes are prescribed by two-year prescriptive period applies only when private property is damaged for public purposes and not when private pr property is taken for public purposes. LSA - R.S. 9:5624.

Pg. 435 - [6,7] The prescriptive period provided by this statute applies only when private property is damaged for public purposes and not to actions for the recovery of the value of private property taken for public purposes. A. K. Roy, Inc. v. Board of Commissioners, supra. In the present case, the appellees seek compensation for the property taken, the avigation servitude, and not for damages sustained as a result of prior flights. The appellees' right to seek just compensation has not prescribed.

N.B. - Highway Department paid owner for servitude right of way contract, making this a taking. Also, no damages developed by roadbed construction, because such construction improved the property's value!

LeBlanc v. City of Lafayette, 558 S9 2nd 259

2. Limitation of actions - Key 6 (9) -- Amended version of prescriptive statute could not be applied retroactively to revive property owners cause of action against city for damages.

N. B.– This roadbed was not a damage because it was paid for and was an improvement to the property. There was no expropriation, -- rather, a com-

pensated taking by a servitude-contract, although the contract was illegal (although it was felt to be legally valid and binding by both Plaintiff and Defendant from the time of its signing until the illegality was discovered and suit developed between '82 and '85, and by Defendant until corrected by Supreme Court Decision of December, 1995!

R. S. 9:5624 -- Actions for damages to property damaged for public purposes.

Pg. 536 -- N. B. -- Actions for damages to property damaged for public purposes are prescribed by two-year prescriptive period, but does not apply when private property is taken for public purposes. Greater Baton Rouge Airport District v. Hayes, 339 So 2nd 431

This section and LSA-C.C. Art. 2630 and R.S. 19:2.1 making actions for damages to private property damaged for public purposes subject to prescription of two-years, were applicable only to actions for damages and claims resulting from legal expropriation.

This section applies where right to use land was acquired by conventional agreement as well as where it was acquired by lawful appropriation. Miller v. Colonial Pipeline Company, 173 So. 2nd 840 -- 175 So. 2nd 644.

Wilson v. DOTD, 464 So. 2nd 343

Pg. 343 --

1. Eminent Domain - Key 58 -- State did not obtain legal title to property where it "over-expropriated" it.

2. Eminent Domain - Key 58 -- State is entitled to

take what it needs for public purposes; any over-expropriation is illegal.

3. Eminent Domain - Key 266 - "Over-expropriation by State and consequent lack of acquisition of lawful title to property constituted an act of dominion wrongfully asserted over the property inconsistent with or in denial of owner's rights, amounting to a tortious conversion.

6. Limitation of Actions - Key 55 (6) -- Prescription did not begin until conduct causing damage was abated, since wrongful conduct was continuous where State had "over-expropriated" property, denying owner access and use of the land.

7. Eminent Domain - Key 288 (1) -- Action to recover attorney fees following successful action to regain possession of land wrongfully "over-expropriated" by State was within the prescriptive period when brought within one year of the last wrongful occupancy by State,. LSA-C.C. Art. 3536 (Repealed). N. B.: DOTD continues to wrongfully occupy!

Roy v. Board of Commissioners for the Pontchrtran Levee District, 111 So 2nd 765

Pg. 767 --

5. "All claims for property by, or for damages to the owner caused by the expropriation of property pursuant to R. S. 19:2 shall be barred by the pre scription of two years commencing on the date on which the property was actually occupied and used for the purposes of the expropriation.

Added Acts. 1950, No. 238, 1."

[1,2] In support of the plea of two-year prescription in the lower court, defendant relied on the provision of R.S. 19:2.1, subd. B, Article 2630 of the Civil Code, and R.S. 9:5624; but, apparently conceding the correctness of the trial judge's ruling that R.S. 19:2.1, subd. B and Article 2630, R.C.C., are applicable only to actions for damages and claims resulting from a legal expropriation of land, defendant, in this court, relies solely on R.S. 9:5624. This section is equally inapposite to the case at bar, since, by its very language, it applies only "when private property is damaged for public purposes," but not to actions for the recovery of the value of property taken for public purposes.

R.S. 19:2.1 -- EXPROPRIATION

Pg. 308 -- 10. LSA-C.C. Art. 2630, R.S. 9:5624, and this section making actions for damages to private property damaged for public purposes subject to prescription of two years, were applicable only to actions for damages and claims resulting from legal exoropriation. Greater Baton Rouge Airport Dist. v. Hays, App. 1976, 339 So. 2nd 431, writ denied 341 So. 2nd 403.

Pg. 306 -- R.S. 19:2.1 - B. All Claims for property by, or for damages to the owner caused by the expropriation of property pursuant to R.S. 19:2.1 shall be barred by the prescription of two years commencing on the date on which the property was actually occupied and used for the purposes of

the expropriation.
Please refer to comments on page 14 .
Please refer to comments on pages 22 and following.
See comments under - Denial of Due Process.

SECTION NO. 14
ILLEGAL USE OF LAW
R. S. 19:14, R. S. 19:2.1, R. S. 13:5111, R. S. 9:5624

21. ADVERSE POSSESSION -- 1 La. D 2nd -- 548 71 (2) -- Prescription does not apply to an absolute nullity (La.-Smith v. Taylor, 75 So. 2nd-850, 226 La. 235)

La. 1957. An absolutely null deed cannot form basis for conclusive prescription of 10 years by grantee named therein; but such grantee can convey to purchaser in good faith a title which can form basis for plea of acquisitive prescription. LSA-C.C. Arts. 3478, 3479. Boudreaux v. Olin Industries, Inc., 94 So. 2nd 417, 232 La. 405.

C. C. 3478-79 -- Adverse Possession requires

1) Good faith

2) Title translative of property

3) Possession during time required by law

4) Object able to be acquired by prescription.

NOTA BENE:

1) Bad faith shown by Exh. AAA.

2) Property title not translated, -- only a right of way servitude being sold, and not fee title.

3) Possession was only through this right of way servitude, felt to be legal by Plaintiff, although Defendant knew or should have known of its illegality (by Exh. AAA), -- yet legality was maintained under "color of law" until discovery of apparent illegality by Plaintiff about 1982-1985, -- and proven illegal by Supreme Court decision, December, 1995!

4) Object unable to be prescribed

a) Valid right of way servitude under color of law until December 1995

b) Suit #2 after December, 1995, preventing one year prescription!

C) Adjudication based upon C. C. Art. 2030, which shall be finalized by C. C. Art. 2033!

This has yet to be done by Court action! -- which is denial of due process both procedural and substantive, abuse of discretion, malfeasance, etc!

SECTION 15
RESPONSE TO VARIOUS JUDGES' COMMENTS REGARDING STATUTES RELATING TO PRESCRIPTION OF PLAINTIFF'S RIGHTS

Louisiana Revised Statutes -- 19:14
19:2.1
13:5111

La. R. S. 19:14 -- is discussed under EXPROPRIATION
- -- Relates to State taking
  - -- In good Faith
  - -- With authority to so act
  - -- With consent or acquiescence of owner
- -- Property owner waives rights
  - -- To contest the necessity for the taking
  - -- And to receive just compensation prior to the taking
  - -- But may bring action for compensation as if State had petitioned for expropriation as per La. R. S. 19:2.1

-- N. B. -- Above cannot apply, -- because
- -- The taking was through a servitude, legal under color of law for many years at the insistence of the Highway Department, until finally voided by the Supreme Court decision of December, 1995!
- -- The taking through servitude was paid for by the Highway Department, by a check to the property owner, as of date of filing and recording of said Servitude!
- -- La. R. S. 19:14 is irrelevant!
  - -- The Judge's are misapplying law, are ignorant of law, abuse discretion, and practice misfeasance and malfeasance!

La. R. S. 19:2.1 -- is discussed under EXPROPRIATION!

(B) -- All claims for property or damages caused by the expropriation barred -- by a prescription two years --

(10) -- Page 308 -- actions subject to two year prescription applicable only to damages and claims resulting from legal expropriation (Greater Baton Rouge Airport District V--

N. B.– The above cannot apply, -- because

-- This was not an expropriation

-- Petition for expropriation was never filed.

-- Claims for property (not "damage") were previously paid for by Highway Department to property owner, through servitude contract (and, although illegality was proven in 1995, -- the Highway Department - DOTD insisted on its legality until forced to relent by the 1995 Supreme Court decision, -- making the servitude valid under color of law from 1953 until the Supreme Court decision in 1995!

-- Later claims relate to ongoing illegal commercial use by third parties allowed by Highway Department, such illegal use by such third parties proving a change from a non-excess into an excess taking, noting all property lying within highway boundaries (as noted on similar property at the Northwest end of this highway system!).

La. R. S. 13:5111 -- Non-expropriation taking compensa-

tion by suit -- such actions prescribe three years from date of such taking

-- N. B. -- Compensation was made at the time of filing and recording of the Servitude Contract!

COMMENTS

Nota Bene: -- In addition to R. S. 19:14, 19:2.1, and 13:5111, --note that R. S. 9:5624 should be studied --
Actions for damages to property damaged for public purposes.

Note 1, Pg 536 -- Are prescribed in two years after completion and acceptance of the public works.

-- Here, again, such actions are a damaging and not a taking! -- Greater Baton Rouge Airport District v. Hays, 339 So. 2nd, 431, -- Writ denied 341 So. 2nd 403.
This section and C. C. Art. 2630 and R. S. 19:2.1 applicable only to damages and claims resulting from legal expropriation. Id.
R. S. 5624 does not bar suit for compensation for property taken -- Cruell v. Jefferson Parish, 216 So 2nd 604, Writ denied 219 So. 2nd 175.
Applies where right to use land was acquired by conventional agreement as well as by lawful appropriation -- Miller v. Colonial Pipeline, 173 So. 2nd 840, Writ denied 173 So. 2nd 644 (N.B. - This property was acquired by an illegal - unlawful act!)

Note 12, Pg 538 -- "Continuing tort" theory that prescrip-

tion does not begin to run until tortious con duct ceases does not apply to two year prescription vs. public body for damage done -- Gaharen v. DOTD, 566 So. 2nd 1007, Granted 571 So. 2nd 619 (Therefore, this case involves tort!)

CONCLUSION

The above statutes cannot apply herein and are irrelevant. Insistence by Judges is

-- Ignorance of law
-- Ignoring of law
-- Abuse of discretion
-- Misfeasance, malfeasance,
-- And, patently UNJUST!

SECTION NO. 16
CLAIM PRECLUSION AND ISSUE PRECLUSION
(RES JUDICATA) (COLLATERAL ESTOPPEL)

R.S. 13:4232 -- Exceptions to the general rule of res judicata A judgment does not bar another action by the plaintiff:

(1) When exceptional circumstances justify relief from the res judicata effect of the judgment;

(2) When the judgment dismissed the first action without prejudice; or

(3) When the judgment reserved the right of the plaintiff to bring another action.

Added by Acts 1990, No. 521, Sec. 1, eff. Jan. 1, 1991.

Comment - 1990

R.S. 13:4232 creates three exceptions to the general principle of res judicata set forth in R.S. 13:4231. First, it gives the court the discretion to grant relief from the judgment for exceptional circumstances. This discretion is necessary to allow the court to balance the principle of res judicata with the interests of justice. This discretion must be exercised on a case by case basis and such relief should be granted only in truly exceptional cases, otherwise the purpose of res judicata would be defeated. For the application of a similar principle see Federal Rule of Civil Procedure 60 (b). Second, it gives the court the authority to reserve in the judgment the right of the plaintiff to bring a subsequent action. This would be particularly useful in custody, support and divorce actions and in cases involving injunctions and installment contracts. It could also be useful in cases where the plaintiff may be unsure whether he will suffer future injuries from the event which he is presently litigating, e.g., risk of

contracting cancer from exposure to asbestos. See, Adams v. Johns-Manville Sales Corp., 783 F. 2nd 589 (5th Cir. 1986); Jackson v. Johns-Manville Sales Corp., 781 F. 2nd 394 (5th Cir. 1986). But it is not intended to apply in the case where the plaintiff has simply failed to assert a right or claim for damages through oversight or lack of proper preparation.

CLAIM AND ISSUE PRECLUSION

Claim preclusion is Res Judicata

Issue Preclusion is Collateral Estoppel

N.B. -- Although the District Court's adjudication on the Merits For Damages occurred before the Supreme Court's adjudication on the Partial Summary Judgment, the Appeal Court's adjudication on the Merits occurred after the Supreme Court's adjudication on the Partial Summary Judgment.

> This became Res Judicata (claim preclusion) as well as Collateral Estoppel (issue preclusion) because the Supreme Court forced use of 2030 and 2033.

Res Judicata (claim preclusion) must have the following:

1. Same cause of action
2. Prior judgment final
3. Prior judgment on merits
4. Prior judgment valid

Collateral Estoppel (issue preclusion) must have:

1. Same issue
2. Issue was litigated
3. Issue was necessarily determined
4. Party had the incentive to litigate anything

Therefore, the Supreme Court erred in allowing District Court's action, and should null this due to both claim and

issue preclusion as of the Supreme Court's decision of December 1995. This means that the Appeal Court's adjudication, coming after December, 1995 must be null due to both claim and issue preclusion!
That is, this case must have applied C.C. Arts. 2030-33, and nothing else, which might null the effects of 2030!

NOTA BENE: Claim preclusion regarding St. Julien claims to alter ownership are precluded by:

> Issue preclusion, noting that ownership was finalized by the Supreme Court Decision of December 8, 1995, which ownership was litigated and decided! This decision extinguished all claims of owner ship by DOTD, and conclusively determined said disputed rights! --this is a direct and/or collateral estoppel to the present DOTD claims!

The issues of trespass, St. Julien, etc, were noted prior to the December 1995 ruling,-- and cannot be re-introduced now, due to

1. Claim preclusion, relating to merger and bar, and

2. Issue preclusion, relating to direct and collateral estoppel!

SECTION NO. 17

INCONSISTENT JUDGMENTS

The December, 1995 mandate by the Supreme Court that C.C. Art. 2030 governs, -- demands use of C.C. Art. 2032, -- that such action does not prescribe, as well as use of C.C. Art. 2033 which mandates the return of the property in its prior physical state, or, if impracticable, payment of damages, to include fruits and revenues, in order to prevent unjust enrichment!

All of the above has been ignored! -- with the use of illegal law!

FAULTS

I -- Omitting judicial notice of many statutes

II-- Omitting judicial notice of judicial conduct

III-- Inconsistent judgments relating to

A - Acceptance of C.C. 2030

B - Omission of C.C. 2033, which actions must follow use of C.C. 2030 (the effects of 2030 through 2033 are preclusive!)

1. To return property as it existed physically before the Servitude Contract or
2. To pay damages, -- and
3. To pay fruits and revenues, -- and
4. To avoid unjust enrichment

IV-- Ignorance of law (forcing use of erroneous law and erroneous facts)

V Ignoring of law and facts (which forced use

of erroneous law and erroneous fact) (mis feasance and malfeasance)

VI -- Erroneous rulings of law

VII -- Abuse of discretion

VII I-- Malum prohibitum

IX -- Malum in se

The effects of C.C. 2030, as mandated by C.C. 2033, as well as by C.C. 12, as ordered by the Supreme Court adjudication of December, 1995, preclude statutes relating to prescription that were adjudicated by District Court Judge Thaxton in Merits Trial Judgment filed and recorded prior to said Supreme Court's decision, -- the Appeal Court's adjudication, filed after the December '95 Supreme Court's decision! -- becoming RES JUDICATA!

Not only does C.C. Art. 2030 force the use of C.C. Art 2033, it is noted that C.C. Art. 7 (1987), derived from C.C. Arts. 7, 11, and 12 (1870), prevents (nulls) juridical acts derogating such laws, especially noting that C.C. Art 12 states that -- "Whatever is (done in contravention of a prohibitory law, is void, although the nullity be not formally directed."

Thus, C.C. Art. 7 (1987), through C.C. Art 12, voids all construction over this property, legally preventing any prescription because of a period of existence of said construction!

Tragically, the inconsistent judgment of the District Court was repeated by both the Appeal Court, and the Supreme Court! These judgments should be vacated - nulled - in order to prevent injury and further injustice, having impaired legal rights, and being inequitable and unconscionable. Such actions relate to ill practices, and are fraudulent!

District Court Judge Thaxton's judgment on the Petition for Summary Judgment was based upon C.C. Art. 2030, -- but he ignored C.C. Art. 2030, and its effects, noted in C.C. Art. 2033, in the Merits trial. Such effects of 2030 through 2033 are PRECLUSIVE! Appeal Court Judges have done the same!

Forcing use of erroneous law and erroneous fact relating to the following:

1. Ignorance of law?
2. Ignoring of law?
3. Ignoring of facts?
4. Abuse of discretion?
5. Refusal to take judicial notice?
6. Malum prohibitum?
7. Malum in se?

Appeal Court Judge Marvin has repeated these tragic errors! The December, 1995 mandate by the Supreme Court that C.C. Art. 2030 governs, -- demands use of C.C. Art. 2032, -- that such action does not prescribe, as well as use of C.C. Art. 2033 which mandates the return of the property in its prior physical state, or, if impracticable, payment of damages, to include fruits and revenues, in order to prevent unjust enrichment!

All of the above has been.ignored! -- with the use of illegal law!

The effects of C.C. 2030, as mandated by C.C. 2033, as well as by C.C. 12, as ordered by the Supreme Court adjudication ofDecember, 1995, preclude statutes relating to prescription that were adjudicated by District Court Judge Thaxton in Merits Trial Judgment filed and recorded <u>prior</u> to said Supreme Court's decision, with Appeal Court's Decision filed and recorded <u>after</u> said Supreme Court's Decision! --

making such RES JUDICATA! Not only does C.C. Art. 2030 force the use of C.C. Art 2033, it is noted that C.C. Art. 7 (1987), derived from C.C. Arts. 7, 11, and '12 (1870), prevent (null) juridical acts derogating such laws, especially noting that C.C. Art 12 states that -- "Whatever is done in contravention of a prohibitory law, is void, although the nullity be not formally directed." Thus, C.C. Art 7 (1987), through C.C. Art 12, voids all construction over this property, legally preventing any prescription because of a period of existence of said construction!

La. App. 1961. In event of error in judgment of court of record the remedy is by appeal as provided for by law; upon expiration of delay for appeal or affirmation on appeal, unsuccessful litigant may not thereafter attack final judgment for error but only for fraud and then only within one year. LSA-C.C.P. Art. 57 2004. Terrebonne v. Arabie, 132 So. 2nd 106.

La. 1945. A court may order the vacating of a judgment where a person having the required interest alleges and proves sufficient grounds therefore, the power in this respect being predicated upon substantial principles of right and wrong, and is to be exercised for the prevention of injury and the further injustice.

Termini v. McCormick, 23, So 2nd. La. 221.

La. App. 2 Cir. 1986. Judgment may be annulled where its enforcement would be unconscionable and inequitable and as impairment of one's legal right, even if no actual fraud or intentional wrongdoing is found. Bradford v. Thomas, 499 So. 2nd 525, writ denied 503 So. 2nd 480.

La. 1955. Rule that a final judgment rendered by a court of competent jurisdiction cannot be reversed, vacated or set aside save through appeal, has no application to a judgment that is absolutely null State ex rel. Griffin v. Stansberry, 83

So. 2nd 890, 228 La. 655.
La. App. 1978. If judgment is absolutely invalid, it may be annulled and cannot form a basis for res judicata. Willis v. Willis, 355 So. 2nd 999, writ denied 356 So. 2nd 1389.
La. App. 1975. While final judgment may have substantive effect of res judicata, it may nevertheless by subject procedurally to attack on ground of its nullity. LSA-C.C.P. Art. 2001; LSA-C.C. Art. 2286. Bowers v Jones-Journet, 316 So. 2nd 18.
La. App. 2 Cir. 1983. Once a final judgment has been rendered, it may only be nulled for vices of form, or where it has been obtained by fraud or ill practices. LSA-C.C. Art. 2006. Tarver v. Tarver, 441 So. 2nd 451; 445 So. 2nd 1232.
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La. 1983 Fraud or ill practices which justify the annulment of a final judgment occur when the circumstances under which the judgment was rendered show the deprivation of legal rights of the litigant who seeks relief and when the enforcement of the judgment would be unconscionable and inequitable. LSA. R.S. 9:2781; LSA-C.C.P. Art. 2004, 2004 comment. Kem Search, Inc. v. Sheffield, 434 So. 2nd 1067.
The annulment of a judgment is not limited to cases of actual fraud or intentional wrong doing, but is sufficiently broad to encompass all situations wherein a judgment is rendered through some! improper practice or procedure which operates, even innocently, to deprive the party cast in judgment of some legal right, and where the enforcement of the Judgment would be unconscionable and inequitable. LSA-R.S. 9:2781; LSA-C.C.P. Art. 2004, 2004 comment. Kem

Search, Inc. v. Sheffield, 434 So. 2nd 1067.

La. 1983. Under statute providing for annulment of judgment obtained by fraud or ill practices, each case must be considered from equitable viewpoint to ascertain whether it would be inequitable or unconscionable to allow judgment to stand, and two-step analysis is required: party seeking annulment must have been deprived of some legal right and resulting judgment must be unconscionable. LSA-C.C.P. Art. 2004. Stewart v. Goeb, 432 So. 2nd 246.

La. App. 1 Cir. 1986. A judgment obtained by fraud or ill practice is one where the circumstances under which it was rendered show a deprivation of the legal rights of the litigants seeking relief and enforcement of the judgment would be unconscionable and inequitable. LSA-C.C.P. Art. 2004. Alphonso v. Cement Product Services, Inc., 499 So. 2nd 305, writ denies 502 So. 2nd 112.

La. App. 2 Cir. 1983. Once a final judgment has been rendered, it may only be annulled for vices of form, or where it has been obtained by fraud or ill practices. LSA-C.C.P. Art. 2006. Tarver v. Tarver, 441 So. 2nd 451, writ denied 445 So. 2nd 1232.

La. App. 2 Cir. 1983. To establish that judgment has been obtained by "fraud or ill practices," within meaning of statute providing that a final judgment obtained by fraud or ill practices may be annulled, it must be shown that circumstances under which the judgment was rendered show the deprivation of legal rights of the litigant seeking relief and that enforcement of the judgment would be unconscionable and inequitable. LSA-C.C.P. Art. 2004. Gramm v. Brock, 430 So. 2nd 199.

La. App. 5 Cir. 1985. Statute providing for annulment of final judgments obtained by fraud or ill practices is not limited to cases of actual fraud or intentional wrongdoing, but is sufficiently broad to encompass all situations wherein judgment is rendered through some improper practice or

procedure which operates, even innocently, to deprive party cast in judgment of some legal right, and where enforcement of judgment would be unconscionable and inequitable. LSA. C.C.P. Art. 2004. Alker v. Martinez, 477 So. 2nd 855. Suit on cause of action which does not exist is"ill practice" within contemplation of statute permitting annulment of final judgments obtained by fraud or ill practices. LSA-C.C.P. Art. 2004. Alker v. Martinez, 477 So. 2nd 855.

La. App. 1973. Judgment may be annulled on ground of "ill. practices" even though no actual fraud or intentional wrong has been committed in procurement of judgment, if it is shown that enforcement of judgment would be unconscionable and inequitable and would deprive litigant who seeks annulment of legal rights to which he is entitled. LSA-C.C.P. Arts. 2002, 2004. Succession of Trouard, 281 So. 2nd 863.

La. App. 1969. Violation of state bar association canon of ethics, if proven, may nullify judgment obtained thereby as ill practice. Louisiana State Bar Association, Articles of Incorporation, art. 14, Secs. 22, 24, 25, 21A LSA-R.S. following 37:218; LSA-C.C.P. Art. 2004. Southern Discount Co. v. Williams, 226 So. 2nd 60.

La. App. 5 Cir. 1983. Legal test for determining whether or not judgment has been obtained by actionable fraud or ill practice and thus may be annulled is whether circumstances under which judgment was rendered showed deprivation of legal right of litigants seeking relief and enforcement of Judgment would have been unconscionable and inequitable. LSA-C.C.P. Art. 2004. Bush v. Lee, 443 So. 2nd 702, writ denied 446 So. 2nd 321.

La. App. 3 Cir. 1983. A petition seeking to annul judgment on ground of fraud or ill practices must clearly allege facts from which such elements may be unmistakably concluded in order to state a cause of action. LSA-C.C.P. Art. 856.

Perrodin v. Zander, 441 So. 2nd 120.
La. App. 4 Cir. 1985. Whether ill practice occurred to render a judgment a nullity is a fact issue which must be proved by evidence placed in the record. LSA-C.C.P. Art. 1201, 2001-2006. O'Neill v. Sumrall, 481 So. 2nd 157.
See comments under 11 - Denial of Due Process.
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ethics, if proven, may nullify judgment obtained thereby as ill practice, Louisiana State Bar Association, Articles of Incorporation, art. 14, Secs. 22, 24, 25, 21A LSA-R.S. following 37:218; LSA-C.C.P. Art. 2004. Southern Discount Co. v. Williams, 226 So. 2nd 60.

La. App. 5 Cir. 1983. Legal test for determining whether or not judgment has been obtained by actionable fraud or ill practice and thus may be annulled is whether circumstances under which judgment was rendered showed deprivation of legal right of litigants seeking relief and enforcement of Judgment would have been unconscionable and inequitable. LSA-C.C.P. Art. 2004. Bush v. Lee, 443 So. 2nd 702, writ denied 446 So. 2nd 321.

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See comments under 13 - Denial of Due Process.

SECTION NO. 18

GOOD FAITH

C.C. Art. 3481 -- GOOD FAITH

CC Art #3480 -- Good faith

For purposes of acquisitive prescription, a possessor is in good faith when he reasonably believes, in light of objective considerations, that he is owner of the thing he possesses. Acts 1982, No. 187, Sec 1.

With understanding of the frequent suits in 1952 and 1953 by the Highway Department attorneys, it becomes quite obvious that the 1953 servitude had to have been known to be.illegal at that Time, thus showing BAD FAITH!

CC Art #1759 -- Good faith

Good faith shall govern the conduct of the obligor and the obligee in whatever pertains to the obligation.

Any Judge who has studied this case, has seen many instances of overt bad faith, as noted in many Exhibits and Admissions!

Obviously, the prior Civil Code Arts prove bad faith, and all shall apply herein due to mandated JUDICIAL NOTICE!

CC Art #487 -- Possessor in good faith: definition

For purposes of accession, a possessor is in good faith when he possesses by virtue of an act translative of ownership and does not know of any defects in his ownership. He ceases to be in good faith when these defects are made known to him or an

action is instituted against him by the owner for the recovery of the thing. -- Act 1979, No. 180, Sec 1

Highway Department employees had to have known of the defect in the Servitude, as noted in exhibit AAA.

Highway Department employees ceased to be in good faith when such defect was made known in the 1985 suit, ongoing since 1985. This article #487 forces the judge to accept as fact that such Highway Department employees have acted in bad faith ab initio!

CC Art #3480 -- Good faith

For purposes of acquisitive prescription, a possessor is in good faith when he reasonably believes, in light of objective considerations, that he is owner of the thing he possesses. Acts 1982, No. 187, Sec 1.

With understanding of the frequent suits in 1952 and 1953 by the Highway Department attorneys, it becomes quite obvious that the 1953 servitude had to have been known to be illegal at that time, thus showing BAD FAITH!

SECTION NO. 19

QUASI ESTOPPEL

Definition -- The principle precluding a party from asserting, to another's disadvantage, a right inconsistent with a position previously taken by him.
-- Includes "equitable estoppel" and embodies doctrine that one may not repudiate an act done or position assumed by him where such course would work injustice to another rightfully relying thereon.

The principle of QUASI ESTOPPEL precludes DOTD from asserting (to Plaintiff's disadvantage), a right inconsistent with the position previously taken by DOTD, -- namely, Since DOTD insisted that the Servitude was legal and binding, until nulled by the Supreme Court decision of December, 1995, -- therefore, DOTD is precluded from using any statute disallowed by the "legal and binding intent of the Servitude under color of law"! --
Therefore, no prescription can run!

Also, prescription does not apply to an absolute nullity -- C.C. Arts. 11,12.

22. GOOD FAITH

C.C. Art. 487, Acts 1979, No. 180 Sec. 1, effective 1 January 1980

Possessor in good faith; definition

> For purposes of accession, a possessor is in good faith when he possess by virtue of an act translative of owner-ship and does not know of any defects in his ownership. He ceases to be in good faith when these defects are made known to him or an action

is instituted against him by the owner for the recovery of the thing.

SECTION NO. 20

C.C. Art. 6 -- RETROACTIVITY OF LAWS

In the absence of contrary legislative expression, substantive laws apply prospectively only. Procedural and interpretative laws apply both prospectively and retroactively, unless there is a legislative expression to the contrary.

Comments

(c) According to a well-settled rule of statutory interpretation, procedural and interpretative laws apply both prospectively and retroactively unless t they violate vested rights or obligations of contracts.

Note -- 1975 Statute of one year prescrip tion is not retroactive, and cannot prevent payment of fruits and revenues from begin ning of roadbed use about 1954 until the new statute on prescription (St. Julien). Also, St. Julien cannot apply in this case!

SECTION NO. 21

PRECARIOUS POSSESSION

C. C. Art. 3556 -- General definition of terms

Precarious. -- That possession is called precarious, which one enjoys by the leave of another, and during his pleasure. The title which excludes the own ership, such as a lease, is also called precarious.

C. C. Art. 3437 -- Precarious possession

The exercise of possession over a thing with the permission of or on behalf of the owner or posses sor is precarious possession.

C. C. Art. 3438 -- Presumption of precariousness

A precarious possessor, such as a lessee or a depositary, is presumed to possess for another although he may intend to possess for himself.

C. C. Art. 3439 -- Termination of precarious possession

Aco-owner, or his universal successor, commences to possess for himself when he demonstrates this intent by overt and unambiguous acts sufficient to give notice to his co-owner. Any other precarious possessor, or his universal successor, commences to possess for himself when he gives actual notice of this intent to the person on whose behalf he is possessing.

C. C. Art. 3440 -- Protection of precarious possession

Where there is a disturbance of possession, the possessory action is available to a precarious possesor,

such as a lessee or a depositary, against anyone except the person for whom he possesses.

C. C. Art. 3477 -- Precarious possessor; inability to pre scribe Acquisitive prescription does not run in favor of a precarious possessor or his universal successor.

C. C. Art. 3478 -- Termination of precarious possession; commencement of prescription

A co-owner, or his universal successor, may commence to prescribe when he demonstrates by overt and unambiguous acts sufficient to give notice to his co-owner that he intends to possess the property for himself. The acquisition and recordation of a title from a person other than a co-owner thus may mark the commencement of prescription. Any other precarious possessor, or his universal successor, may commence to prescribe when he gives actual notice to the person on whose behalf he is possessing that he intends to possess for himself.

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CONVENTIONAL SERVITUDES
Section 139, Page 400. Precariousness

One who exercises possession over a thing on behalf of another or with the permission of the owner is a precarious possessor. Such a possessor may acquire neither ownership nor at servi tude by prescription.

Thus, one who uses servitude of passage by virtue of a lease granted to him by the owner of the dominant estate may not acquire by prescription the servitude of passage for himself;

Acts 1982
No 187
Section 1

Page 75 -- Article 3477. Precarious possession; inability to prescribe - Acquisitive prescription does not run in favor of a precarious possessor or his universal successor. Acts. 1982, No. 187, Sec. 1, eff. Jan. 1, 1983.

Revision comments - 1982

(a) This provision reproduces the substance of Article 3510 of the Louisiana Civil Code of 1870. It does not change the law.

(b) Acquisitive prescription does not run in favor of a precarious possessor. A precarious possessor is one who exercises "possession over a thing with the permission or on behalf of the owner or possessor." Article 3437, supra. A precarious possessor, such as a lessee or a depositary, "is presumed to possess for another although he may intend to possess for himself." Article 3438, supra.

(c) A lessee possesses for the lessor, and a deposi tary possesses for the depositor. A usufructuary possesses the usufruct for himself and the thing for the naked owner; however, and a person having a predial servitude possesses the servitude for him self and the land for the owner. See C. C. P. Art. 3656; Board of Commissioners v. S. D. Hunter Foundation, 354 So. 2nd 156 (La. 1978). A co-owner possesses his undivided share for himself and the immovable both for himself and for his co-owners.

SECTION NO. 22

ADVERSE POSSESSION -- 1 La. D 2nd -- 548
71 (2) -Prescription does not apply to an absolute nullity
(La.-Smith v. Taylor, 75 So. 2nd-850, 226 La. 235)

La. 1957. An absolutely null deed cannot form basis for conclusive prescription of 10 years by grantee named therein; but such grantee can convey to purchaser in good faith a title which can form basis for plea of acquisitive prescription. LSAC.C. Arts. 3478, 3479. Boudreaux v. Olin Industries, Inc., 94 So. 2nd 417, 232 La. 405.
C. C. 3478-79 -- Adverse Possession requires

1) Good faith

2) Title translative of property

3) Possession during time required by law

4) Object able to be acquired by prescription.

NOTA BENE:

1) Bad faith shown by exh. AAA.

2) Property title not translated, -- only a right of way servitude being sold, and not fee title.

3) Possession was only through this right of way servitude, felt to be legal by Plaintiff, although Defendant knew or should have known of its illegality (by Exh. AAA), -- yet legality was maintained under "color of

law" until discovery of apparent illegality by Plaintiff about 1982-1985, -- and proven illegal by Supreme Court decision, December, 1995!

4) Object unable to be prescribed
a) Valid right of way servitude under color of law until December 1995
b) Suit #2 after December, 1995, preventing one year prescription!
c) Adjudication based upon C. C. Art. 2030, which shall be finalized by C. C. Art. 2033!

This has yet to be done by Court action! -- which is denial of due process both procedural and substantive, abuse of discretion, malfeasance, etc!

C. C. Art. 3437 -- Precarious possession
Acts 1982, No. 187, Sec. 1 -- Title 23, 24, 25

Acquisitive prescription does not run in favor of a precarious possessor.

Revision comments - 1982

b) A precarious possessor is one who exercises "possession over a thing with the permission or on behalf of the owner or possessor".

c) -- a person having a predial servitude possesses the servitude for himself and the land for the owner that says a person having a predial servitude possesses the servitude for himself and the land for the owner.

SECTION NO. 23
GOOD FAITH

C.C. Art. 487, Acts 1979, No. 180 Sec. 1, effective 1 January 1980

Possessor in good faith; definition

> For purposes of accession, a possessor is in good faith when he possess by virtue of an act translative of ownership and does not know of any defects in his ownership. He ceases to be in good faith when these defects are made known to him or an action is instituted against him by the owner for the recovery of the thing.

SECTION NO. 24
CONCLUSION
PETITION TO VACATE AND FOR NULLITY

Chronology -

1953 --Servitude was purchased from Philip Lieber by Highway Department.
- -- Good faith on part of owner
- -- Bad faith on part of Highway Department (See Exh. AAA)
- -- Highway construction improved the pararoadbed property, according to Highway Department Counsel Bertrand, obviously true.

1955 --Highway Department permitted third party use, which was illegal, obviously making that portion used by third parties an excess taking! It should be noted that such pararoadbed property was used for

parking, sale of automobiles, sale of Christmas trees, etc, from curb to curb to curb, blocking any sight distance for which the Highway Department insisted such area was required.

Owner requested return of that property used by third parties, which was refused with the above notation. Thereafter, owner requested Highway Department to list the rights of said Highway Department, third parties, and owner, himself!

The Highway Department never answered!

1963 --Loss of pararoadbed property due to liberative prescription noted by Highway Department in 1989, with return of two-thirds of said pararoadbed property in 1989.

1966 --Highway Department refused Plaintiff's request to release that property used by third parties, again stating that it was needed for adequate sight distance.

1982 --Suit by Plaintiff was timed to prevent possible running of thirty year prescription.

1985 --Amended suit, after discovery of Servitude's illegality, as well as the excess taking.

1989 -- Quitclaim to plaintiff by Highway Department of only two-thirds of pararoadbed property.

1) In collusion with the City, holding the Kings Highway frontage for future highway widening!

2) Intra Departmental admission of liberative prescription which occurred in 1963, so that they quitclaimed back some of this property, but not all, in 1989!

1994 --District Court adjudication of Servitude's

ABSOLUTE NULLITY! (C. C. Art. 2030)

1) C. C. Art. 2032 -- Prescription of action -- action for absolute nullity does not prescribe.

2) C. C. Art. 2033 -- Effects -- Contract is deemed never to have existed! -- If unrestorable, -- damages are due, to include fruits and revenues, in order to prevent unjust enrichment.

3) C. C. Art. 12 -- Whatever is done in contravention of a prohibitory law (R. S. 48:312) is void!

4) C. E. Art. 202 -- Judicial Notice!

1995 --Appeal Court's agreeing with the District Court's adjudication of absolute nullity, through C. C. Art. 2030.

1995 --District Court's adjudication on damages

1 - Maintained that prescription had run on any possible claim by original owner or present owner.

2 - Maintained that Highway Department use of roadbed forced prescription of ownership of roadbed by Highway Department.

3 - Ignored plain meaning, syntax, and legislative intent of various statutes, as listed in the first few pages of this Brief

Following Judgment of Absolute Nullity, as per C. C. Art. 2030, Judge refused to use (ignored) the correct mandated statutes of 2032 and 2033, to allow return of property as it was before changes by the illegal servitude's acts, or to pay damages, including fruits and revenues, in order to avoid unjust enrichment!

Judge Thaxton used the wrong statutes, -- and even then he used them incorrectly, gravely erring in his misunderstanding of their plain meaning, syntax, and legislative intent!

Judge Thaxton used statutes that cannot apply to rights previously paid for by the Highway Department -- statutes that cannot apply to property taken but not damaged or expropriated, -- statutes that cannot apply to an illegal contract!

Note that the Appeal Court Adjudication (agreeing with the District Court) was recorded after the Supreme Court Adjudication of Nullity, which makes use of many laws RES JUDICATA (issues - claims preclusion), -- noting that C. C. 2030 forces use of C. C. 2033, -- which excludes any other statutes!

Finally, note that C.C. Art. 3477, regarding PRECARIOUS POSSESSION, has never been mentioned, and prevents prescription of any land herein by DOTD!

Judges must understand that Highway Department paid owner for right of way - Servitude contract for property improvements (roadbed construction).

This suit for damages relates to the refusal of the Highway Department to return use of pararoadbed property to owner after it continued to allow commercial use by third parties, making such used area an excess taking at that time, -- which is illegal, -- the Courts mandating all return of excess taking! Damages should include interest on pararoadbed property at its value established by Highway Department's allowing third-party commercial use, from Cirea 1955, until a portion of the excess taking was returned in 1989.

Damages should include fruits and revenues estimated on this property, as well as the roadbed property.

Then, Highway Department - DOTD should purchase use of this property.

N.B. - DOTD Counsel Bertrand has always insisted that the pararoadbed property's value was greatly enhanced by 1) removal of the levee, and 2) roadbed construction, -- which is quite true!

This was not a damage! -- This was an improve ment!

And, then, -- the Highway Department gave third parties the commercial use, -- repeatedly denying the owner such commercial advantages!

Obviously, the Decision by the Judges of the Supreme Court was not finalized by the District Appeal Court Judges, -- nor was the Appeal Court's Decision on Damages studied by the Supreme Court Judges!

Civil Code Art. 2033 was IGNORED by all Judges! -- A

fraudulent abuse of discretion, via misfeasance, malfeasance, and nonfeasance!

OUR JUDICIARY MUST APPLY LAW -- QUA LAW! OUR NAPOLEONIC CODE DEMANDS LAW APPLICATION, -- AND NOT WHIM APPLICATION (FOR WHATEVER MOTIVE CAUSING SUCH!)!

THE ATROCIOUS ABUSES OF DISCRETION BY OUR JUDICIARY HEREIN DEMAND A NULLITY JUDGMENT!

JUSTITIA! ---- AEQUITAS!

Respectfully submitted,

/s/ Samuel L. Lieber, M.D.
Samuel L. Lieber, M. D.
In Proper Person
Date: 17 Aug 1997